



Control Number: 34210



Item Number: 3

Addendum StartPage: 0

**DOCKET NO. 34210**

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PUBLIC UTILITY COMMISSION  
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OF TEXAS

**AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO RELIANT ENERGY §  
POWER SUPPLY, LLC'S VIOLATION §  
OF PURA § 39.151(j) AND P.U.C. §  
SUBST. R. 25.503(f)(2), RELATING TO §  
FAILURE TO ADHERE TO ERCOT §  
PROTOCOLS §§ 6.5.4(2), 6.10.5.4 AND §  
6.5.1.1(4) CONCERNING LOAD §  
ACTING AS RESOURCE SERVICE §  
REQUIREMENTS §**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Agreed Notice of Violation and Settlement Agreement (Agreement) reached between the Public Utility Commission of Texas (Commission) Staff and Reliant Energy Power Supply, LLC (Reliant Supply) (collectively, Parties) regarding the investigation into Reliant Supply's violations of § 39.151(j) of PURA<sup>1</sup> and P.U.C. SUBST. R. 25.503(f)(2), relating to failure to adhere to the Electric Reliability Council of Texas (ERCOT) Protocols §§ 6.5.4(2) and 6.10.5.4, and 6.5.1.1(4) concerning Load acting as Resource (LaaR) service requirements on April 17, 18, and October 3, 2006.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

1. Reliant Supply is a power marketer pursuant to PURA § 39.355.
2. Reliant Supply is a "market participant" in the Texas wholesale electric market, pursuant to P.U.C. SUBST. R. 25.503(c)(5).

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 1998 & Supp. 2006) (PURA).

3. Reliant Supply has a contract with ERCOT to act as a Qualified Scheduling Entity (QSE) to schedule sales and deliveries of electricity and ancillary services.
4. To ensure the reliability of the ERCOT power grid, ERCOT Protocol § 6.5.4(2) requires a QSE to deploy (unload) a scheduled amount of its electric load within 10 minutes of an instruction from ERCOT.
5. Once a QSE deploys its scheduled amount of an electric load, ERCOT Protocol § 6.10.5.4 requires a QSE to return its deployed resources to their committed operating level within three hours of ERCOT's recall instruction, or to substitute alternate uncommitted resources and notify ERCOT of the substitution.<sup>2</sup>
6. ERCOT Protocols § 6.5.1.1(4) also requires a QSE to provide ERCOT separate telemetry of the real power consumption of each LaaR providing ancillary services and each LaaR's response to ERCOT dispatch instructions.
7. On April 17, 2006, ERCOT experienced a shortfall of available electricity after demand exceeded ERCOT projections and several power generating plants tripped off unexpectedly.
8. In response to the situation, ERCOT directed market participants, including Reliant Supply, to implement "step two" of its Electric Emergency Curtailment Plan (EECP), which requires a market participant to deploy any LaaR that it has contracted to deploy within 10 minutes of ERCOT's deployment instruction.
9. On April 17, 2006, during the hour ending 16:00 and 17:00, Reliant Supply had an obligation to deploy 204 megawatts (MW) from LaaRs, but failed to deploy 139 MW of this amount from its LaaRs within 10 minutes of ERCOT's deployment instruction.

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<sup>2</sup> The requirement to return to service within three hours of the recall instruction by ERCOT was in Protocols § 6.10.5.4 on the date of violation and was moved to Protocols § 6.5.4(13) when Protocol Revision Request No. 665 went into effect on October 1, 2006.

10. On April 17 and 18, 2006, Reliant Supply had an obligation to return to service 204 MW from its LaaRs within three hours of ERCOT's recall instruction or to substitute alternate uncommitted resources and notify ERCOT of the substitution; however, Reliant Supply failed to return to service 65 MW of this amount from its LaaRs within three hours of the recall instruction and failed to notify ERCOT that it had substituted other resources.
11. On April 17, 2006, Reliant Supply failed to provide ERCOT accurate telemetry of a LaaR's response to an ERCOT dispatch instruction.
12. On October 3, 2006, ERCOT experienced a NERC Disturbance Control Standard (DCS) event and instructed all QSEs representing LaaRs to deploy all LaaRs scheduled to provide Responsive Reserve Service (RRS).
13. On October 3, 2006, during the hour ending 18:00, Reliant Supply had an obligation to deploy 242 MW from its LaaRs, but failed to deploy 141.4 MW of this amount from its LaaRs within 10 minutes of ERCOT's deployment instruction.
14. On April 17 and October 3, 2006, Reliant Supply violated ERCOT Protocol § 6.5.4(2) because it failed to deploy its LaaRs within 10 minutes of ERCOT's deployment instruction.
15. On April 17 and 18, 2006, Reliant Supply violated ERCOT Protocol § 6.10.5.4 because it did not return its LaaRs to their committed operating level within three hours of ERCOT's recall instruction, or substitute alternate uncommitted resources and notify ERCOT of the substitution.
16. On April 17, 2006, Reliant Supply violated ERCOT Protocol § 6.5.1.1(4) because it failed to provide ERCOT correct telemetry regarding a LaaR's response to ERCOT dispatch instructions.

17. P.U.C. SUBST. R. 25.503(f)(2) requires a market participant to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
  18. PURA § 39.151(j) requires a power marketer to “observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT.”
  19. As part of the Commission’s oversight of the ERCOT wholesale electric market, Commission Staff reviews information provided by ERCOT regarding compliance by market participants with ERCOT Protocols and Commission rules.
  20. On February 27, 2007, Reliant Supply was provided proper notice of Commission Staff’s investigation in this case, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
  21. Commission Staff recommended that Reliant Supply pay an administrative penalty of \$111,581. A Commission Staff memorandum explaining the recommendation was filed in this docket as Exhibit 1 to the Agreement.
  22. Reliant Supply fully cooperated with Commission Staff’s investigation.
  23. Reliant Supply adopted a mitigation plan to improve compliance with LaaR deployment, return to service, and telemetry requirements.
  24. Reliant Supply participated in one or more settlement discussions with Commission Staff, the purpose of which was to amicably resolve the violations described herein.
  25. The Agreement resolves the violations that were the subject of the investigation of Reliant Supply’s LaaR deployment on April 17, 18, and October 3, 2006.
- 4

26. Consistent with the Agreement, Reliant Supply acknowledges the violations detailed in this Order and agrees to pay an administrative penalty of \$111,581 to the Commission.

## II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 15.023, 15.024, 39.101, 39.151, 39.157, 39.355, 39.356, and 39.357.
2. Reliant Supply was provided proper notice of Commission Staff's investigation in this case, the results of the investigation, information about their right to a hearing, and an opportunity to explain its activities, pursuant to PURA § 15.024, P.U.C. PROC. R. 22.246, and P.U.C. SUBST. R. 25.503(I).
3. Reliant Supply's failure to adhere to ERCOT Protocol § 6.5.4(2) by not deploying some of its LaaRs within 10 minutes of ERCOT instructions on April 17, 18, and October 3, 2006, violated P.U.C. SUBST. R. 25.503(f)(2), which requires a market participant to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
4. Reliant Supply's failure to adhere to ERCOT Protocol § 6.10.5.4 on April 17 and 18, 2006, by not returning its LaaRs to their committed operating level or substituting resources within three hours or ERCOT's recall instruction or notifying ERCOT it was substituting generation violated P.U.C. SUBST. R. 25.503(f)(2), which requires a market participant to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
5. Reliant Supply's failure to adhere to ERCOT Protocol § 6.5.1.1(4) by not providing ERCOT accurate telemetry of a LaaR's response to ERCOT dispatch instruction on April 17, 2006, violated P.U.C. SUBST. R. 25.503(f)(2), which requires a market participant to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.

6. Reliant Supply's violations of ERCOT Protocols §§ 6.5.4(2), 6.10.5.4, and 6.5.1.1(4) are violations of PURA § 39.151(j), which requires a power marketer to "observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT."
7. Failure to comply with PURA, a Commission rule or order, or ERCOT Protocols subjects a power marketer to administrative penalty and procedures as set forth in PURA §§ 15.023 - 15.028 and §§ 39.356 - 39.357 and P.U.C. PROC. R. 22.246.
8. P.U.C. PROC. R. 22.246(g)(1)(B)-(C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement attached to this Order as Attachment 1 is approved and the Parties shall be bound by its terms.
2. Reliant Supply shall pay an administrative penalty of \$111,581 before the expiration of 30 calendar days from the date this Order is signed. Payment shall be made payable to the Public Utility Commission of Texas and shall reference Docket No. 34210. A check for the administrative penalty shall be sent to the following address:  
  
ATTN: Fiscal Services  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711
3. As provided in the Agreement, before the expiration of 45 calendar days following the date this Order is signed, Reliant Supply shall file an affidavit in this docket attesting to

payment of the administrative penalty to the Commission imposed by the Agreement and this Order.

4. The imposition of this administrative penalty to the Commission and Reliant Supply's compliance with all of the terms and conditions set forth in the Agreement and this Order resolve all matters related to Commission Staff's investigation of Reliant Supply's LaaR deployment on April 17, 18, and October 3, 2006.
5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principal or methodology that may underlie the Agreement. Neither should the entry of an Order consistent with the Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the 31<sup>st</sup> day of May 2007.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
PAUL HUDSON, CHAIRMAN

  
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JULIE PARSLEY, COMMISSIONER

  
\_\_\_\_\_  
BARRY T. SMITHERMAN, COMMISSIONER



DOCKET NO. 34210

AGREED NOTICE OF VIOLATION AND § PUBLIC UTILITY COMMISSION  
 SETTLEMENT AGREEMENT §  
 RELATING TO RELIANT ENERGY § OF TEXAS  
 POWER SUPPLY, LLC'S VIOLATION §  
 OF PURA § 39.151(j) AND P.U.C. SUBST. §  
 R. 25.503(f)(2); RELATING TO FAILURE §  
 TO ADHERE TO ERCOT PROTOCOLS §  
 §§ 6.5.4(2), 6.10.5.4 AND 6.5.1.1(4) §  
 CONCERNING LOAD ACTING AS §  
 RESOURCE SERVICE REQUIREMENTS §

**AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT**

COME NOW Staff of the Public Utility Commission of Texas ("Staff") and Reliant Energy Power Supply, LLC ("REPS"; collectively, the "Parties"), who hereby enter into and agree upon the terms of this Agreed Notice of Violation and Settlement Agreement ("Agreement"). This Agreement addresses an investigation by Staff into alleged violations by REPS of § 39.151(j) of the Public Utility Regulatory Act<sup>1</sup> and P.U.C. SUBST. R. 25.503(f)(2), relating to REPS's failure to adhere to ERCOT Protocols §§ 6.5.4(2), 6.10.5.4, and 6.5.1.1(4) concerning Load acting as Resource (LaaR) service requirements on April 17, April 18, and October 3, 2006.

Staff and REPS agree as follows:

1. REPS is a registered power marketer pursuant to PURA § 39.355 and is a "market participant" in the Texas wholesale electric market pursuant to P.U.C. SUBST. R. 25.503(c)(5).
2. REPS has a contract with the Electric Reliability Council of Texas (ERCOT) to act as a Qualified Scheduling Entity (QSE) to schedule sales and deliveries of electricity and ancillary services.
3. To ensure the reliability of the ERCOT power grid, ERCOT Protocols § 6.5.4(2) requires a QSE to deploy (unload) a scheduled amount of its electric load within 10 minutes of an instruction from ERCOT.

<sup>1</sup> TEX. UTIL. CODE §§ 11.001-66.017 (Vernon 1998 & Supp. 2006) ("PURA").

4. Once a QSE deploys its scheduled amount of an electric load, ERCOT Protocols § 6.10.5.4 requires a QSE to return its deployed resources to their committed operating level within three hours of ERCOT's recall instruction, or to substitute alternate uncommitted resources and notify ERCOT of the substitution.<sup>2</sup>
5. ERCOT Protocols § 6.5.1.1(4) also requires a QSE to provide ERCOT separate telemetry of the real power consumption of each LaaR providing ancillary services and each LaaR's response to ERCOT dispatch instructions.
6. On April 17, 2006, ERCOT experienced a shortfall of available electricity after demand exceeded ERCOT projections and several power generating plants tripped off unexpectedly.
7. In response to the situation, ERCOT directed market participants, including REPS, to implement "step two" of its Electric Emergency Curtailment Plan (EECP), which requires a market participant to deploy any LaaR that it has contracted to deploy within 10 minutes of ERCOT's deployment instruction.
8. On April 17, 2006, during the hours ending 16:00 and 17:00, REPS had an obligation to deploy 204 megawatts (MW) from LaaRs, but failed to deploy 139 MW of this amount from its LaaRs within 10 minutes of ERCOT's deployment instruction.
9. On April 17 and 18, 2006, REPS had an obligation to return to service 204 MW from its LaaRs within three hours of ERCOT's recall instruction or to substitute alternate uncommitted resources and notify ERCOT of the substitution; however, REPS failed to return to service 65 MW of this amount from its LaaRs within three hours of the recall instruction and failed to notify ERCOT that it substituted other resources.
10. On April 17, 2006, REPS failed to provide ERCOT accurate telemetry of a LaaR's response to an ERCOT dispatch instruction.
11. On October 3, 2006, ERCOT experienced a NERC Disturbance Control Standard (DCS) event and instructed all QSEs representing LaaRs to deploy all LaaRs scheduled to provide Responsive Reserve Service (RRS).

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<sup>2</sup> The requirement to return to service within three hours of the recall instruction by ERCOT was in Protocols § 6.10.5.4 on the dates of violation and was moved to Protocols § 6.5.4(13) when Protocol Revision Request No.

12. On October 3, 2006, during the hour ending 18:00, REPS had an obligation to deploy 242 MW from its LaaRs, but failed to deploy 141.4 MW of this amount from its LaaRs within 10 minutes of ERCOT's deployment instruction.
13. REPS on April 17 and October 3, 2006, violated ERCOT Protocols § 6.5.4(2) because it failed to deploy some of its LaaRs within 10 minutes of ERCOT's deployment instruction.
14. REPS on April 17 and 18, 2006, violated ERCOT Protocols § 6.10.5.4 because it did not return some of its LaaRs to their committed operating level within three hours of ERCOT's recall instruction, or substitute alternate uncommitted resources and notify ERCOT of the substitution.
15. REPS on April 17, 2006, violated ERCOT Protocols § 6.5.1.1(4) because it failed to provide ERCOT accurate telemetry of a LaaR's response to an ERCOT dispatch instruction.
16. REPS's violations of ERCOT Protocols §§ 6.5.4(2), 6.10.5.4 and 6.5.1.1(4) are violations of P.U.C. SUBST. R. 25.503(f)(2), which requires a market participant to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Public Utility Commission of Texas ("Commission").
17. REPS's violations of ERCOT Protocols §§ 6.5.4(2), 6.10.5.4 and 6.5.1.1(4) are violations of PURA § 39.151(j), which requires a power marketer to "observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT."
18. As part of the Commission's oversight of the ERCOT wholesale electric market, Staff reviews information provided by ERCOT regarding compliance by market participants with ERCOT Protocols and Commission rules.
19. On February 27, 2007, REPS was provided proper notice of Staff's investigation in this case, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.

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665 went into effect on October 1, 2006.

20. Staff recommended that REPS pay an administrative penalty of \$111,581. A Staff memorandum explaining the recommendation is attached as Exhibit 1.
21. REPS fully cooperated with Staff's investigation.
22. REPS adopted a mitigation plan to improve compliance with LaaR deployment, return to service and telemetry requirements.
23. REPS participated in one or more settlement discussions with Staff, the purpose of which was to amicably resolve the violations, which were the subject of the investigation and are described herein.
24. This Agreement resolves all matters related to the Staff's investigation of REPS' LaaR deployment on April 17, 18 and October 3, 2006.
25. **Jurisdiction.** REPS admits the jurisdiction of the Commission over the Parties and the subject matter of this Agreement, and the jurisdiction and authority of the Commission to enter a final order approving this Agreement.
26. **Waiver.** Unless specifically provided for in this Agreement, REPS expressly waives any applicable notice and procedures that might otherwise be authorized or required in this proceeding in the interest of a more timely resolution of this matter.
27. **Reliance.** The Parties stipulate that all of the statements in this Agreement are accurate and may be relied upon by the Commission in resolving this matter.
28. **Administrative Penalty.** REPS agrees to pay the Commission an administrative penalty of \$111,581.
29. **Details of Payment.** REPS agrees to remit payment of the full amount of the administrative penalty to the Commission no later than 30 calendar days after the date on which the Commission enters an order consistent with this Agreement. This penalty amount shall be tendered in the form of a check payable to the Public Utility Commission of Texas and shall reference the P.U.C. docket number in this case. The check shall be sent to the following address:

ATTN: Fiscal Services  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

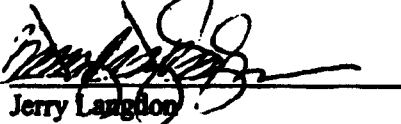
30. **Proof of Payment.** Upon payment of the penalty amount to the Commission, REPS shall file an affidavit attesting that the payment has been made. This affidavit shall be filed in this docket no later than 45 days after the Commission has entered an order consistent with this Agreement.
31. **Resolution of Issues.** This Agreement fully and finally resolves, pursuant to the terms and conditions set forth herein, all matters related to Staff's investigation of REPS' LaaR deployment on April 17, 18 and October 3, 2006. Accordingly, the Parties hereby request that the Commission approve this Agreement.
32. **Proposed Order.** The Parties agree to the attached Proposed Order, labeled Exhibit 2.
33. **Report to Commission.** This Agreement, including Staff's memorandum and the attached Proposed Order, is also intended to constitute a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
34. **Limitation on Agreement.** The Parties agree that a Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forum. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
35. **Right to Withdraw.** The Parties contemplate that this Agreement will be approved by the Commission as contemplated by P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this

Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within twenty (20) calendar days of the date the Commission files the order acting on this Agreement. Failure to provide such notice within the specified time-period shall constitute a waiver of the right to withdraw and acceptance of the changes to this Agreement made by the Commission.

36. **Inadmissibility of Settlement Documents.** Pursuant to Texas Rule of Evidence 408, if either Party withdraws its consent from this Agreement in accordance with the preceding paragraph and this matter proceeds to an evidentiary hearing, this Agreement shall not be admissible in evidence in such hearing.
37. **Entire Agreement.** This Agreement, including Staff's memorandum and the attached Proposed Order, contains the entire agreement between Staff and REPS as to the matters addressed herein. Moreover, this Agreement supersedes all other written and oral exchanges, or negotiations among the Parties or their representatives with regard to the subjects contained herein.
38. **Representative's Authority and Multiple Counterparts.** Each person executing this Agreement represents that he or she is authorized to sign on behalf of the Party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Agreement may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.
39. **Assurance.** REPS warrants that it has read the foregoing document carefully, knows the contents thereof, and signs the same as its free act.

**EXECUTED by the Parties by and through their authorized representatives designated**

**below.**

  
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**Jerry Langdon**  
**Executive Vice President, Public and Regulatory Affairs**  
**Chief Compliance Officer**  
**Reliant Energy, Inc.**  
**P. O. Box 148**  
**Houston, TX 77001**  
**Fax (713) 497-0215**  
**on behalf of Reliant Energy Power Supply, L.L.C.**

4/20/07  
Date

  
\_\_\_\_\_

**Paul A. Curtis**  
**Attorney**  
**Legal Division**  
**Public Utility Commission of Texas**  
**P.O. Box 13326**  
**Austin, TX 78711**  
**Fax (512) 936-7268**

4/26/2007  
Date